

On January 24, 2007 appellant, a 58-year-old practical nurse, filed a traumatic injury claim alleging that on January 22, 2007 she was exposed to hepatitis C when she accidentally stuck her thumb with a contaminated needle of a hepatitis C positive veteran. She did not lose any time from work or have any medical expenses. No evidence in support of her claim was submitted.

By letter dated February 9, 2007, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion containing a diagnosis and addressing the relationship of her claimed condition and specific employment factors. No additional evidence was received.

In a decision dated March 21, 2007, the Office denied appellant's claim on the grounds that she failed to establish fact of injury. It found that there was no evidence to establish that the event occurred as alleged. Furthermore, there was no medical evidence which provided a diagnosis which could be connected to the claimed event.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury and an occupational disease.<sup>3</sup>

Office regulations, at 20 C.F.R. § 10.5(ee), define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.<sup>4</sup> To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>5</sup>

The Act<sup>6</sup> defines injury stating that this includes, in addition to injury by accident, a disease proximately caused by the employment.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</sup> 5 U.S.C. § 8101(5).

Chapter 2.805.8 of the Office's procedure manual<sup>7</sup> provides:

*“High-Risk Employment.* Certain kinds of employment routinely present situations which may lead to infection by contact with animals, human blood, bodily secretions and other substances. Conditions such as [human immunodeficiency virus] (HIV) infection and hepatitis B more commonly represent a work hazard in health care facilities, correctional institutions and drug treatment centers, among others, than in [f]ederal workplaces as a whole....

*“a. Physical Injury and Prophylactic Treatment.* For claims based on transmission of a communicable disease where the means of transmission and the incubation period are medically feasible, the CE [claims examiner] should do the following:

(1) *If the source of infection is a known or probable carrier of the disease, the CE should accept the case for the physical injury involved and authorize prophylactic treatment....”*

Chapter 3.400.7 of the procedure manual<sup>8</sup> provides:

*a. Preventive (Prophylactic) Treatment.* The [Act] does not authorize provision of preventive measures such as vaccines and inoculations and, in general, preventive treatment is a responsibility of the employing agency under the provisions of 5 U.S.C. § 7901. However, preventive care can be authorized by [the Office] for the following:

(1) *Complications of preventive measures* which are provided or sponsored by the agency, such as adverse reaction to prophylactic immunization.

(2) *An injury involving actual or probable exposure* to a known contaminant, thereby requiring disease-specific measures against infection. Included among such treatments would be tetanus antitoxin or booster toxoid injections for puncture wounds; administration of rabies vaccine where a bite from a rabid animal or one whose status was unknown, is involved; or AZT where exposure to HIV virus has occurred.”<sup>9</sup>

### ANALYSIS

Appellant claimed that she was exposed to hepatitis C in the performance of duty on January 22, 2007 when she was accidentally stuck by a needle which had been used on a veteran who was hepatitis C positive. The Office denied the claim on the grounds that she submitted

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.8 (October 1995).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.7 (April 1992).

<sup>9</sup> See also 20 C.F.R. § 10.313(b) (provides that the Office can authorize treatment where there is “actual or probable exposure to a known contaminant due to an injury, requiring disease specific measures against the infection”).

insufficient evidence to establish that the incident occurred as alleged, that appellant sustained a diagnosed condition and that the condition was causally related to the incident.

The Board finds that appellant's work as a practical nurse exposes her to accidental needle sticks which may contain blood positive for various viruses, such as the hepatitis C virus claimed.<sup>10</sup> Appellant works in a health care facility. On January 22, 2007 she was disposing a contaminated needle when she claimed that she accidentally stuck herself with the needle which punctured her skin. There is no evidence to the contrary to refute appellant's allegation. The Board finds that appellant has established that the needle stick incident on January 22, 2007 occurred as alleged.

Usually, the question of whether an employment incident causes a personal injury generally can be established only by medical evidence.<sup>11</sup> However, as noted, Office procedures contain specific provisions pertaining to high risk employment. Chapter 2.805.8.a(1) of the Office's procedures provides that the Office should accept the case for the physical injury involved and authorize prophylactic treatment when the source of the infection is a known or probable carrier of the disease. In this case, appellant claimed the needle she accidentally stuck herself that had been used on a veteran who was hepatitis C positive. However, there is no evidence of file denoting that the source of the contaminated needle was positive for hepatitis C virus. Although it is appellant's burden to establish her claim, the Office is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>12</sup> In order to properly adjudicate the claim, it is important to secure evidence regarding whether the source of the contaminated needle was actually positive for the hepatitis C virus. The Board, therefore, will remand the case to the Office to request additional information from the employing establishment regarding the veteran whom appellant alleges was positive for hepatitis C virus. Upon securing the information, the Office should then undertake any further development as is deemed necessary to determine whether the employment incident of January 22, 2007 caused a personal injury and issue an appropriate decision.

### **CONCLUSION**

The Board finds the case is not in posture for decision.

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<sup>10</sup> An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. *See Edward W. Malaniak*, 51 ECAB 451 (2000).

<sup>11</sup> *See, e.g., Calvin E. King*, 51 ECAB 394 (2000).

<sup>12</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 21, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this opinion of the Board.

Issued: March 18, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board